IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.112 of 2006
Date of Decision : 19.07.2007

Ram Nath .....Appellant

versus

Mukandi and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Ravindra Jain, Advocate for the appellant.

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JUDGMENT

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby suit for declaration that the plaintiff has become owner of the suit land on account of the fact that defendants Nos.1 to 7 have not redeemed the mortgage of the land, was dismissed.

It is the case of the appellant that the land was mortgaged with possession with the predecessor in-interest of the plaintiff in the year 1888 vide mutation Exhibit P-7, but the same has not been redeemed and, therefore, the plaintiff has become owner of the suit land. The learned trial Court decreed the suit but the learned First Appellate Court found that apart from mutation Exhibit P-7 vide which mortgage was created, the appellant has not produced the revenue record from the year 1888 till 1954-55. In the revenue record for the year 1954-55, the predecessors-in-interest of the

defendants are recorded as mortgagors, whereas predecessor in-interest of the plaintiff are recorded as mortgages but there is no document to connect the land comprised in Exhibit P-7 with the said revenue record. In fact, it was conceded by the learned counsel for the plaintiff that on the basis of Khatauni Paimaish Istemal Exhibit P8/A, it could not be proved that the land, which was mortgaged, is the land in the present suit. Thus, the case set up on the basis of jamabandi after the year 1954-55 is not tenable. Unless the terms and conditions of the mortgage are proved in respect of the suit land, the plaintiff is not entitled to the relief of declaration.

From the findings recorded by the learned First Appellate Court, it is apparent that the plaintiff has failed to produce the revenue record after the year 1888 till 1954-55. The plaintiff has also failed to connect the land mortgaged vide mutation Exhibit P-7 with the land described in the jamabandi for the year 1954-55. Therefore, on the basis of presumption alone, the plaintiff cannot be granted decree for declaration that he has become owner of the suit land.

In view of the above, I do not find any patent illegality or material irregularity in the judgment and decree passed by the learned First Appellate Court which may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

19-07-2007 (HEMANT GUPTA)
*ks/mohinder JUDGE